

COMMONWEALTH OF KENTUCKY
GOVERNOR'S BLUE RIBBON COMMISSION ON PUBLIC EMPLOYEES
RETIREMENT SYSTEMS

September 25, 2007
3:00 P.M.
Room 171, Capitol Annex
Frankfort, Kentucky

COMMISSION MEMBERS PRESENT

Brian Crall
CHAIRMAN

Mike Burnside
Stan Cave
Mark Birdwhistell
John "Jack" Adams
Bob Arnold (Rich Ornstein ~ proxy)
Charlie Borders
Robert Brown
David Dowell
William Hanes
Gary Harbin
Frank Hatfield (Bob Wagoner ~ proxy)
Deborah Holland-Tudor
Lee Jackson
Andrew Jacobs
David Jones (Bryan Johnson ~ proxy)
Sylvia Lovely (J.D. Chaney ~ proxy)
Todd Lowe
Brent McKim
Harry Moberly
Ronnie O'Nan
James Parsons
Shawn Ridley

SUMMARY
Minutes of Meeting
Kelli A. Matherly
Secretary's Office
Cabinet for Health and Family Services

Governor's Blue Ribbon Commission Meeting
September 25, 2007

Chairman Crall welcomed the members of the Blue Ribbon Commission, guests and legislators, Rep. Tommy Thompson, Rep. Mike Cherry, Rep. Harry Moberly and Senator Borders. Roll call was taken and minutes from the BRC meeting were approved. An update from the previous groups' meetings was requested by Chairman Crall with the following reports:

Workgroup 1 was reported by Mike Burnside, who stated they had met earlier in the day with a presentation given by Leslie Thompson of the Denver Office of Gabriel Roeder Smith, which centered on factors the group may want to consider when developing a sustainable funding strategy. (The information is available on the Finance Website).

Workgroup 2 was reported by Secretary Crall, who stated they had also met prior to the full commission meeting. He stated they heard a presentation by Mike Carter of the Dallas Office of Gabriel Roeder Smith regarding pension benefits to employees in the Commonwealth and how they compared to other states. They looked at what other states are doing to preserve the value of benefits of employees, how to make benefits attractive to future employees and still maintain sustainability for the Commonwealth as well as the taxpayers. (The presentation is available on the Finance Website).

Workgroup 3 was reported by Secretary Birdwhistell, who stated they had met previously in the day with a report by Rick Bresard, a consultant with Gabriel Roeder Smith. The initial report shows that there is a significant amount of additional drill down that will need to be completed before any major analysis can be done and/or conclusions reached.

Chairman Crall introduced Mr. Joe Wyatt (by videoconference), who was retained by the Blue Ribbon Commission to analyze the legal considerations involving the Kentucky Retirement System. Secretary Crall stated the report is in the near final form and is awaiting sign-off by Kentucky Counsel. Secretary Crall thanked all persons who have spent many hours assisting in the endeavor.

Mr. Wyatt gave a summary on the legal considerations to the "inviolable contract" both generally and with respect to the Kentucky Retirement Systems in Kentucky and to define benefit pension provisions as well as medical benefits. (Mr. Wyatt's reports to the Commission can be found on the Finance Website).

Secretary Crall turned the floor over to Bill Hanes to introduce Bob Klaussner, counsel to the Kentucky Retirement Systems to respond on their behalf.

Mr. Klausner summarized that Mr. Wyatt correctly stated the law as it applies to Kentucky law. He stated that Kentucky has one of the clearest statements of protection of rights for public employees for both retirement and healthcare. In regards to statute 61.702, the General Assembly restated its position when it changed the law for July of 2003 and later hires by saying that the "inviolable contract" would not apply for healthcare benefits for that group of workers. In

essence they stated the "inviolable contract" did apply for anyone who was hired prior to June 30, 2003.

The following are questions/comments that were raised regarding Mr. Wyatt's and Mr. Klausner's summations:

Question: What about future accruals for employees:

Answer: Future accruals are treated the same as past accruals when you have a state like Kentucky that has specific non violation language in its statutes or its constitution.

Question: What exactly is a benefit?

Answer: It is the opinion of justices that it isn't just the multiplier, it is the whole complex of provisions that govern the plan. In relation to healthcare, it is harder to recognize what constitutes a change due to patterns of insurance and technology.

Question: What about the ERISA standard as it would apply?

Answer: ERISA has anti-cutback rules. A US 6th district decision under ERISA has since developed a common law that says a lifetime promise of healthcare means just that. The fact that people have retired and are out of the bargaining unit which now bargains with management for future benefits is not going to be affected by future contracts.

Question: Are there any other cases regarding "inviolable contracts" in Kentucky?

Answer: Only one case can be recalled which was from Owensboro in the 1940's relating to "inviolable contracts". Through the Jones decision and several Attorney General opinions the term of inviolable contract is pretty clear whereas the promise made is a promise to be kept.

Question: Do employee contributions constitute a benefit?

Answer: The short answer is yes. If you were to raise employee contributions and offer nothing additional, it would be a violation of the "inviolable contract". It would be no different than making someone receive less pay. The same would apply on insurance premiums with no off-setting advantage of cost and you would also have an "inviolable contract".

Question: Could you elaborate on the legal theory of Kentucky Care Standard of 1994?

Answer: The Kentucky Kare Standard of 1994 is a snapshot for that day and should be looked at as a point of reference or a minimum level that's required. The discreet picture of 1994 is not locked in stone. What you would need to look at to determine is whether the healthcare promise has been kept in the nature and quality of the program.

Question: Is there in this nature of compensation presently received or deferred the ability in the contract to shift deferred received compensation into a presently received compensation (*i.e.* an enhancement of salary for a reduction in some benefit actuarially analyzed to be comparable?

Answer: The actuarial distinction between the cost of healthcare and the value that could be provided for wages that equal the value of the promise would put the wages far out of sight.

Chairman Crall thanked both Mr. Wyatt and Mr. Klausner for their reports and comments and again noted all information and presentations would be on the Finance Website.

There were no public comments or questions.

Chairman Crall made a brief statement as to the information received and how it was needed to aid the workgroups as they went forward in knowing the boundaries of the "inviolable contract" and where they could spend the time analyzing potential changes, without likely incurring expensive legal challenge to the Commonwealth. He also envisioned a series of meetings in October for the purpose of discussing information that has been presented and to help the members come to common understandings regarding the current situation. November would then begin the consideration and deliberation of recommendations from the workgroups for vote by BRC, submission to Governor and to ready for 2008 Session. Meeting dates for October would be scheduled and forwarded by the end of the week.

MEETING ADJOURNED

Respectfully submitted,

Chairman Brian Crall
Blue Ribbon Retirement Commission